

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDWARD KELLEY and

AUSTIN CARTER,

Defendants.

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No. 3:22-CR-118-TAV-JEM

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or recommendation as appropriate. This case is before the Court on Defendant Austin Carter's Unopposed Motion to Continue the Trial and Associated Deadlines [Doc. 28], filed on January 26, 2023.

In his motion, Defendant Carter asks the Court to continue the February 28, 2023, trial date and all associated deadlines. The motion relates that Defendant Carter was indicted on December 21, 2022, made his Initial Appearance before the Court on January 3, 2023, was provided initial discovery on January 10, 2023, and had his plea deadline set for January 27, 2023. Counsel for Defendant states that, despite diligent efforts, there is not enough time prior to the February 28, 2023, trial date for Defendant to prepare for trial, as this case requires time for preparation as well as for plea agreements beyond what is allotted under the current schedule. Counsel avers that granting the requested continuance will serve the ends of justice in that it will allow him the necessary time to adequately prepare for trial and provide Defendant Carter the effective assistance of counsel, as well as provide the parties an opportunity to engage in settlement negotiations, which may well prove fruitful. Counsel for Defendant Carter relates that he has spoken with Codefendant Edward Kelley, who does not oppose the motion, as well as counsel for the Government, who also does not oppose the motion.

Counsel further relates that Defendant Carter understands and agrees that the time period of this continuance would be excludable for speedy trial computation.

Based upon the information provided by Defendant in his motion and the fact that neither the Government nor Codefendant Kelley opposes the continuance, the Court finds the ends of justice served by granting a continuance outweigh the interests of Defendants and the public in a speedy trial. *See* 18 U.S.C. § 3161(h)(7)(A). In making this determination, the Court has considered the factors set forth in 18 U.S.C. § 3161(h)(7)(B). Specifically, the Court concludes that not granting a continuance would both result in a miscarriage of justice and deny counsel for Defendant Carter the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. *See id.* § 3161(h)(7)(B)(i)–(iv). Counsel needs more time to confer with Defendant as to trial strategy and a possible resolution of this case as well as prepare for trial in the event a resolution is not reached, all of which cannot be done by the February 28, 2023, trial date.

The Court therefore **GRANTS** Defendant's Unopposed Motion to Continue the Trial and Associated Deadlines [**Doc. 28**]. The trial of this case is reset to **June 27, 2023**. A new, comprehensive, trial schedule is included below. Because the Court has found that the ends of justice served by granting a continuance outweigh the interests of Defendants and the public in a speedy trial, all of the time between the filing of the motion on January 26, 2023, and the new trial date of June 27, 2023, is fully excludable time under the Speedy Trial Act. *See* 18 U.S.C. § 3161(h)(1)(D), -(h)(7)(A)–(B).

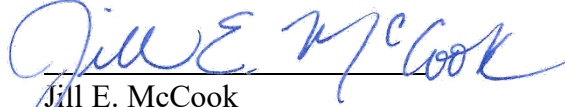
Accordingly, it is **ORDERED** as follows:

- (1) Defendant Austin Carter's Unopposed Motion to Continue the Trial and Associated Deadlines [**Doc. 28**] is **GRANTED**;
- (2) The trial of this matter is reset to commence on **June 27, 2023, at 9:00 a.m.**, before the Honorable Thomas A. Varlan, United States District Judge;

- (3) All time between the filing of the motion on **January 26, 2023**, and the new trial date of **June 27, 2023**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein;
- (4) The new deadline for filing pretrial motions is extended to **March 14, 2023**. Responses to motions are due on or before **March 28, 2023**. **Any necessary hearing on pretrial motions** will be set at a later date;
- (5) The deadline for filing a plea agreement in the record and providing reciprocal discovery is **May 26, 2023**;
- (6) The deadline for filing motions *in limine* is **June 12, 2023**;
- (7) The parties are to appear before the undersigned for a final pretrial conference on **June 13, 2023, at 10:30 a.m.**; and
- (8) Requests for special jury instructions with appropriate citations to authority pursuant to Local Rule 7.4 shall be filed on or before **June 16, 2023**.

IT IS SO ORDERED.

ENTER:


Jill E. McCook
United States Magistrate Judge